

REMARKS

This is responsive to an Office Action mailed on October 4, 2007. The Office Action rejected claims 1-6, 9-13, 17-43 and 53-68. Applicant has amended claims 1, 22, 35, 53 and 61. The application currently includes claims 1-6, 9-13, 17-43 and 53-68.

Support for the amended claim language can be found throughout the application and specifically at pg. 4, lines 19-30 and pg. 18, lines 15-24. While amending claims 1, 22, 35, 53 and 61, no new matter has been added to the application.

The Office Action rejected independent claims 1, 53 and 61 as being anticipated by the Frattinger et al. U.S. Patent No. 5,204,131 (hereinafter the Frattinger patent). The Office Action alleges that the Frattinger patent discloses an egg based substance (liquid whole eggs; 8.85%) with a water absorbing thickener (e.g., flour which is comprised of particles) wherein a secondary ingredient including, for example, raisins may be mixed in. The Office Action alleges that due to the thick nature of the cookie dough, it is expected that the secondary ingredients would remain distributed until baking of the dough. The Office Action alleges that it is expected that the flour would possess the particular absorbing ability as set forth, for example, in claim 10 as such degree of absorbance is modest. The Office Action notes that the mixture further includes a stabilizing agent of starch by way of the flour or in the alternative of gelatin (as in Example 1), the use of gums which inherently provide freeze-thaw stability (e.g., 1.25% of the dough; col. 1, lines 43-52). The Office Action concludes that upon cooking of the dough, the egg component will coagulate.

Applicant respectfully disagrees that independent claims 1, 53 and 61 are anticipated by the Frattinger patent. As amended, elements of each of the independent claims includes an egg based substance comprising between about 45 weight percent and 95.5 weight percent of the egg- based material. Further, each of the amended independent claims includes as an element a water absorbing thickener comprising between about 0.2 weight percent and 8.0 weight percent of the egg-based material. There is no disclosure in the Frattinger patent of such a composition.

Rather, the Frattinger patent discloses a process for preparing cookies and cookies resulting from the process where the eggs are included in at about 8.85%. This is below the low end of the claimed range of the egg base substance which is defined as being between about 45 weight percent and 99.5 weight percent of the egg-based material.

Flour is alleged to be a water absorbing thickener, which is included at about 31 weight percent of the cookie. In contrast, the water absorbing thickener is defined as being between about 0.2 weight percent and 8 weight percent of the egg-based material. The defined range of the thickener is below the disclosed amount of flour in the cookie.

Due to the high percentage of butter and flour utilized in the Frattinger patent, the disclosed composition when combined produces a cookie dough that can be cooked in a microwave oven to make a cookie with a soft chewy texture. A cookie dough and the resulting cooking is not a egg-based material as claimed. The egg-based material when cooked has as a major portion an egg-based substance. The resulting coagulated mass looks and tastes like a cooked egg food. A cooked egg food does not look or taste like a cookie. Therefore, the Frattinger patent does not disclose or suggest the claimed egg-based material.

For the foregoing reasons, the Frattinger patent does not anticipate any of the independent claims 1, 53 or 61. Reconsideration and allowance of independent claims 1, 53 and 61 are respectfully requested.

The Office Action also rejected dependent claims 2, 3, 9-11, 17, 18, 54-56, 59, 60, 62-64, 67 and 68 as being anticipated by the Frattinger patent. While Applicant does not acquiesce to the rejection of these dependent claims, Applicant submits that the anticipation rejections are moot in light of the fact that independent claims 1, 53 and 61 are in allowable form. Reconsideration and allowance of dependent claims 2, 3, 9-11, 17, 18, 54-56, 59, 60, 62-64, 67 and 68 are respectfully requested.

The Office Action rejected independent claims 22 and 53 as being anticipated by JP 63-216455 (JP '455). The Office Action alleges that JP '455 discloses a process for preparing a food wherein an egg solution is blended with a cooked water absorbent material (bread crumbs) wherein the same is heated and coagulated. The Office Action alleges that it is expected that the

bread crumbs would possess a particular absorbing ability as set forth, for example, in claim 26 as such degree of absorbance is modest.

Applicant respectfully submits that independent claims 22 and 53, as amended, are not anticipated by JP '455. An element of both amended independent claims 22 and 53 include a cooked water absorbent material comprising between 0.2 and 8 weight percent of the egg-based material. There is no disclosure in JP '455 of such a composition.

Rather, JP '455 discloses one hundred parts per weight of an egg solution blended with between 20 and 50 parts per weight of bread crumbs which is then coagulated under heating. Twenty parts per one hundred parts equates to about 16 weight percent and fifty parts per one hundred parts equates to about 33 weight percent of bread crumbs. In contrast, Applicant is claiming maximum value of the range of water absorbent material of about 8 weight percent of the egg-based material which is less than about one half of the lowest weight percent of bread crumbs disclosed in JP' 455.

There is no teaching or suggestion in JP '455 which would lead to a reduction by about half of the water absorbent material which would then yield satisfactory product. Rather the disclosed composition in JP '455 would have a thicker, heavier texture and mouth-feel than the disclosed egg-based material. Also, because JP '455 discloses almost more than double the claimed cooked water-absorbent material, the disclosed composition would have a more of a bread-like taste as compared to the claimed egg-based material when cooked. Therefore, JP '455 does not disclose or suggest the claimed egg-based material in claims 22 and 53.

Therefore, claims 22 and 53 are patentable over JP '455. Reconsideration and allowance of claims 22 and 53 are respectfully requested.

The Office Action also rejected dependent claims 23-26, 28, 54 and 55 as being anticipated by JP '455. While Applicant does not acquiesce to the rejections of dependent claims 23-26, 28, 54 and 55, Applicant submits that the rejections are moot in light of the fact that independent claims 22 and 53 are in allowable form. Reconsideration and allowance of dependent claims 23-26, 28, 54 and 55 are respectfully requested.

The Office Action rejected independent claims 1, 22, 35, 53 and 61 as being anticipated by JP 2001-45959 (JP '959). The Office Action alleges that JP '959 discloses a food comprising whole eggs (inherently fluid and flowable) which are mixed with a water absorbent thickener (i.e., bread crumb; e.g., 20%), wheat flour (including starch which would inherently provide stabilizing), water (or, in the alternative, milk), and then pieces of supplemental food such as fruit, chocolates, raspberry puree which are also mixed homogeneously throughout the food wherein the mixed ingredients are then baked. The Office Action alleges that it is expected that the bread crumbs would possess the particular absorbing ability as set forth, for example, in claim 10 as such degree of absorbance is modest. The Office Action also alleges that the egg material will coagulate during baking and it is expected that due to the presence of the starch therein that said product would exhibit some freeze/thaw stability.

Applicant respectfully submits that independent claims 1, 22, 35, 53 and 61, as amended, are not anticipated by JP '959. Elements of each of the amended claims 1, 22, 35, 53 and 61 includes an egg-based substance comprising between about 45 weight percent and 99.5 weight percent of the egg-based material. Similarly, each of the amended independent claims includes a water absorbent thickener comprising between about 0.2 weight percent and 8 weight percent of the egg-based material. There is no such disclosure in JP '959 of such a composition of an egg-based material.

Rather, JP '959 discloses a cream puff dough comprising between 30 and 45 weight percent of whole egg and 11 and 45 weight percent of wheat flour and bread crumbs which comprises the water absorbent thickener. There is no disclosure of utilizing between 45 and 99.5 weight percent of an egg base substance along with between about 0.2 weight percent and 8.0 weight percent of a water absorbent thickener in an egg-based material as claimed. Rather, the claimed range of the water absorbent material is significantly less than the amount of water absorbent material as disclosed in JP '959.

The resulting food product disclosed in JP '959, a cream puff does not have a similar appearance, taste or texture when compared to the egg-based material when cooked. A cream puff has a light, fluffy texture and typically is has a generally ball shaped appearance and

does not taste like an egg. The claimed invention has the yellow-white appearance of an egg, has the consistency of a cooked egg and tastes like a cooked egg. There is no disclosure or suggestion of an egg-based product in JP '959 as claimed in claims 1, 22, 35, 53 and 61 because a cream puff is not a similar food product to the egg-based material

Therefore, Applicant respectfully submits that amended independent claims 1, 22, 35, 53 and 61 are patentable over JP '959. Reconsideration and allowance of independent claims 1, 22, 35, 53 and 61 are respectfully requested.

The Office action also rejected dependent claims 2-6, 9-13, 17, 18, 23-26, 28, 29, 33, 34, 36-38, 41, 43, 54-56, 59, 60, 62-64, 67 and 68 are being anticipated by JP '959. While Applicant does not acquiesce to the rejections of these dependent claims, Applicant submits that by virtue of their dependency on allowable independent claims 1, 22, 35, 53 and 61, that the dependent claims are also in allowable form. Reconsideration and allowance of the dependent claims are respectfully requested.

The Office Action also rejected independent claims 1, 22, 53 and 61 as being anticipated by JP 402069166 (JP '166). The Office Action alleges that JP '166 discloses a food wherein eggs (inherently fluid and flowable) and bread crumbs (water-absorbent thickener) are combined and then blended with vegetables, meat, fish and shellfish and subsequently baked. The fluid is alleged to also include starch, a stabilizing agent, via the wheat flour also present during baking. The Office Action states that it is expected that the bread crumbs would possess the particular absorbing ability as set forth, for example, in claim 10 as such degree of absorbance is modest. The Office Action states that the egg material will coagulate during baking and it is expected that due to the presence of the starch therein that said product would exhibit some freeze/thaw stability.

Applicant respectfully disagrees that any of the amended independent claims 1, 22, 53 and 61 are anticipated by JP '166. Elements of each of the amended independent claims includes an egg-based substance comprising between 45 weight percent and 99.5 weight percent of the egg-based material along with a water absorbent thickener comprising about 0.2 weight

percent and 8 weight percent of the egg-based material. There is no disclosure of such a composition in JP '166.

Rather, JP '166 discloses a thin, flat cake made with unsweetened batter that is fried with bits of vegetables. The batter consists of between 20 and 90 weight percent of bread crumbs, which is then mixed with water, eggs, seasonings and spice to give the dough which is blended with the vegetables, meat, fish, shellfish and baked. Further, there is also grain flour which consists essentially of wheat flour that is also included in the cake. There is no disclosure of including between about 45 and 99.5 weight percent of an egg-based substance in the final product as claimed. There also is no disclosure of including a water absorbing thickener in the range of between 0.2 and 8 weight percent as claimed. Rather, the minimum composition of bread crumbs is disclosed as being 20 weight percent.

Due to the composition disclosed in JP '166, a cake is formed when cooked. A cake does not look like a cooked egg. A cake does not taste like a cooked egg. Finally a cake does not have the same texture of a cooked egg. Therefore, JP '166 does not anticipate or suggest the claimed egg-based material.

For the foregoing reasons, JP '166 does not disclose each and every element of the amended independent claims 1, 22, 53 and 61. As such, independent claims 1, 22, 53 and 61 are in allowable form. Reconsideration and allowance of independent claims 1, 22, 53 and 61 are respectfully requested.

The Office Action also rejected dependent claims 2-6, 9-11, 17, 18, 23-26, 28, 29, 32-34, 54-56, 59, 60, 62-64, 67 and 68 as being anticipated by JP '166. While Applicant does not acquiesce to the rejections of these dependent claims, Applicant submits that by virtue of their dependency on independent claims 1, 22, 53 and 61, which are in allowable form, that dependent claims 2-6, 9-11, 17, 18, 23-26, 28, 29, 32-34, 54-56, 59, 60, 62-64, 67 and 68 are also in allowable form. Reconsideration and allowance of the dependent claims 2-6, 9-11, 17, 18, 23-26, 28, 29, 32-34, 54-56, 59, 60, 62-64, 67 and 68 are respectfully requested.

The Office Action also rejected independent claims 1, 22 and 53 as being anticipated by Pfeiffer U.S. Patent Application Publication No. 2003/0044510 (Pfeiffer

application). The Office Action alleges that the Pfeiffer application discloses a food wherein beaten eggs (inherently fluid and flowable), comminuted bread (i.e., water-absorbent thickener and employed in less than 25% of the total weight, see paragraph 25), pieces of a supplemental food (bacon, pork, etc.) which are mixed together and formed into a patty wherein it is expected that the comminuted bread would aid in binding and maintaining the distribution of pieces of the supplemental food through the food. The Office Action alleges that it is expected that the bread ingredient would possess the particular absorbing ability as set forth, for example, in claim 10 as such degree of absorbance is modest. The Office Action alleges that upon cooking of the food, the egg component will coagulate and that the Pfeiffer application discloses breading the food product and frying the same (e.g., paragraph 12).

Applicant respectfully disagrees that amended independent claims 1, 22 and 53 are anticipated by the Pfeiffer application. Elements of each of the amended independent claims include an egg base substance comprising between about 45 weight percent and 99.5 weight percent of the egg-based material along with a water absorbent thickener comprising between about 0.2 weight percent and 8 weight percent of the egg-based material. There is no such disclosure of the claimed composition in the Pfeiffer application.

Rather, the Pfeiffer application discloses a meat patty that includes three eggs per 950 grams of other material in paragraph 25 of the Pfeiffer application. Three eggs in 950 grams of material is not within the claimed range of between 45 weight percent and 99.5 weight percent of the total product. Further, 150 grams of white bread or rolls, as disclosed in paragraph 25 of the Pfeiffer application, per 950 grams of product equates to 15.8 weight percent. This is significantly above the claimed range of 0.2 and 8 weight percent of water absorbent thickener as claimed.

Also a meat patty when cooked looks like and tastes like cooked meat. A meat patty does not look or taste like the claimed egg-based material when cooked. Therefore, the Pfeiffer application does not anticipate or suggest the claimed egg-based material.

Claims 1, 22 and 53 are patentable over the Pfeiffer application. Reconsideration and allowance of independent claims 1, 22 and 53 are respectfully requested.

The Office Action also rejected dependent claims 2-6, 10, 11, 17, 19, 20, 23-26, 28, 30-34, 54, 55 and 57-60 as being anticipated by the Pfeiffer application. While Applicant does not acquiesce to the rejections of dependent claims 2-6, 10, 11, 17, 19, 20, 23-26, 28, 30-34, 54, 55 and 57-60, Applicant submits that by virtue of their dependence upon allowable independent claims 1, 22 and 53, that the dependent claims 2-6, 10, 11, 17, 19, 20, 23-26, 28, 30-34, 54, 55 and 57-60 are in allowable form. Reconsideration and allowance of the dependent claims 2-6, 10, 11, 17, 19, 20, 23-26, 28, 30-34, 54, 55 and 57-60 are respectfully requested.

The Office Action also rejected dependent claim 27 as being obvious over JP '166 or JP '959 as applied in paragraph 5. While Applicant does not acquiesce to this rejection, Applicant submits that the rejection is moot in light of the fact that dependent claims 27 depends from allowable claim 22. Reconsideration and allowance of dependent claims 27 are respectfully requested.

The Office Action also rejected dependent claims 12, 13, 35-37 and 39-43 as being obvious over the Pfeiffer application as applied in paragraph 7 of the Office Action as taken together with the AllRecipe document. While Applicant does not acquiesce to the obviousness rejections dependent claims 12, 13, 35-37 and 39-43, Applicant submits that the rejections of claims 12, 13, 35-37 and 39-43 are moot in light of the fact that independent claims 1 and 33 are in allowable form. Reconsideration and allowance of claims 12, 13, 35-37 and 39-43 are respectfully requested.

The Office Action also rejected dependent claims 9, 18, 21, 27, 29, 38, 56 and 61-68 under 35 USC § 103(a). The Office Action cites the Ullrich patent as teaching eggs containing patties having freeze-thaw stability due to the presence of, for example, xanthan gum (paragraph 17). The Office Action states that it would have been obvious to one having ordinary skill in the art at the time of the invention to have included such stabilizing agent in the product of the Pfeiffer application to impart a freeze-thaw stability for the same.

For the reasons stated with respect to the allowability of claims 1, 22 and 53 with respect to the Pfeiffer application, Applicant submits that independent claim 61 is also in allowable form. The Pfeiffer application does not disclose an egg base composition having an


egg base substance comprising between 45 and 99.5 weight percent of the egg-based material and also a water-absorbent material comprising between 0.2 and 8 weight percent of the egg-based material, but rather a meat patty. The Ullrich application, which was cited to disclose a food product having freeze-thaw stability due to the presence of xanthan gum, does not cure the deficiencies of the Pfeiffer application. Therefore, independent claim 61 is in allowable form. Reconsideration and allowance of independent claim 61 are respectfully requested.

The Office Action also rejected dependent claims 9, 18, 21, 27, 29, 38, 56 and 62-68 as being obvious over the Pfeiffer application in view of the Ullrich patent and in view of the AllRecipe reference. While Applicant does not acquiesce to the rejections of these dependent claims, Applicant submits that the rejections are moot in light of the fact that independent claims 1, 22, 35, 53 and 61 are in allowable form. Reconsideration and allowance of the dependent claims are respectfully requested.

The Director is authorized to charge any fee deficiency required by this paper or credit any overpayment to Deposit Account No. 23-1123.

Respectfully submitted,

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